Office - Supreme Court, U.S.
FILED
NOV 1 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-5500

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NATHAN SOLOMON,

Petitioner,

v.

DAVID HARRIS, Warden of Green Haven Correctional Facility and ROBERT ABRAMS Attorney General of the State of New York

Respondents.

PETITIONER'S REPLY BRIEF

PHYLIS SKLOOT BAMBERGER
WILLIAM L. HELLERSTEIN
The Legal Aid Society
Federal Defender Services Unit
531 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

Attorneys for Petitioner

OF COUNSEL:

Daniel B. Rubock

No. 83-5500

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NATHAN SOLOMON,

Petitioner,

v.

DAVID HARRIS, Warden of Green Haven Correctional Facility and ROBERT ABRAMS Attorney General of the State of New York

Respondents.

PETITIONER'S REPLY BRIEF

Petitioner submits this reply brief in response to respondents' Brief in Opposition.

There has been no evidentiary hearing in this case. Yet, using speculative "facts" undetermined by any court, respondents argue that petitioner should be denied a hearing on his claims. On page 8 of their brief, respondents state that petitioner "undoubtedly had discussions and conferences with his attorney" (emphasis added) on adjournment dates; assert incredibly that preparatory

work probably was done by appointed counsel for which reimbursement was not sought; and state that petitioner "undoubtedly" used co-defendant's attorney's preparatory work (there is no proof whether any such work was done) "to their mutual benefit." These assertions have no basis in the record. However, by citing these assumptions, respondents concede their materiality. Because these crucial, material issues of fact are disputed and remain judicially undetermined, dismissal of the petition is precluded. The "missing facts" upon which respondents base their opposition should be determined at a hearing rather than being assumed as true by respondents' ipse dixit. Because of respondents' concessions, summary reversal of the judgment of the Court of Appeals and a remand to the District Court for a hearing is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari, or alternatively should summarily reverse and remand for a hearing.

Respectfully submitted,

PHYLIS SKLOOT BAMBERGER
WILLIAM L. HELLERSTEIN
The Legal Aid Society
Federal Defender Services Unit
531 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

Attorneys for the Petitioner

OF COUNSEL:

Daniel B. Rubock

New York, New York
November 1, 1983